

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6034

BILL NUMBER: SB 104

DATE PREPARED: Apr 11, 2001

BILL AMENDED: Apr 10, 2001

SUBJECT: Right to Pauper Counsel in Civil Actions.

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FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- (A) It creates a Civil and Indigent Counsel Fund from the former Public Defense Fund to reimburse counties for the cost of representing indigents in civil and criminal cases.
- (B) It provides for a \$2 Civil Indigent Fee to be added to the cost of a birth certificate; this fee is to be deposited in the Civil and Criminal Indigent Counsel Fund but may only be used to reimburse counties for expenses related to appointed counsel in civil indigent cases.
- (C) It eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. It gives a court the discretion to appoint an attorney for an indigent person in a civil action.
- (D) It provides that an attorney appointed to represent an indigent in a civil action may be reimbursed from the Civil and Criminal Indigent Counsel Fund or from money appropriated to the court.
- (E) It establishes procedures for the disbursement of money from the Civil and Criminal Indigent Counsel Fund.
- (F) It provides that, with the exception of money deposited in the fund from the Civil Indigent Fee, a county may not be reimbursed for the expenses of appointed counsel in civil cases unless all outstanding claims for reimbursement for criminal cases have been paid in full.
- (G) It makes conforming amendments.

Effective Date: Upon passage.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) Under current law, the Public Defense Fund receives a semiannual transfer of \$1.2 M from the State General Fund. The money in this fund is used to reimburse counties for a portion of costs incurred in providing criminal defense assistance to indigent criminal defendants. The \$2 fee that this bill would authorize could generate an estimated \$170,000 statewide based on the reported 85,055 births in 1998. This additional money would be deposited into a sub-account of the

Civil and Criminal Indigent Counsel Fund and could be used only to reimburse a county for expenses related to assigning an attorney to represent an indigent in a civil case. If all reimbursements for expenses incurred in criminal cases can be paid in full, then any remaining balances can be used to reimburse counties for civil indigent counsel.

Currently, payments for criminal cases from the Public Defense Fund have been suspended due to the increase in reimbursement requests. In 1998, 13 counties qualified for reimbursement from the fund while in 2000, 45 counties qualified for reimbursement. As of March 21, 2001, the Public Defense Fund had a balance of \$773,030 but had requests from counties for reimbursement of \$990,558.

Explanation of Local Expenditures: (Revised) *Background:* Under current law, the courts are required to appoint legal counsel for any litigant in a civil proceeding who the court determines to be indigent. Under this bill, the courts would no longer be required to appoint indigent counsel for all civil cases involving indigent litigants. However, courts would remain obliged to appoint counsel for indigent persons in the following civil proceedings:

IC 12-10-3-22 (Hearing to determine whether an endangered adult should be required to receive protective services)

IC 12-20-15-6 (Duty to inform person of availability of free legal counsel for appeal of denial or reduction of poor relief)

IC 16-39-3-5 (Proceeding to release mental health records of patient committed to mental health facility)

IC 16-41-9-2 (Proceeding to place restrictions upon an individual who has been diagnosed as having a communicable disease or other disease that is a danger to health)

IC 29-3-2-3 (Appointment of guardian ad litem in proceedings involving a minor or incapacitated person)

IC 31-32-4-2; IC 31-37-12-3 (Child in a proceeding to adjudicate a child as a delinquent child)

IC 31-32-4-3 (Parent in a proceeding to terminate a parent-child relationship)

This bill will save counties an indeterminable amount of money by no longer requiring the courts to appoint their public defender staff or hire outside counsel to represent indigent litigants in civil cases. For example, some courts are reportedly using public defenders to represent indigent parties in divorce cases and certain noncriminal cases.

The amount of money that courts are currently spending on legal services for indigent persons in civil cases is not reported. The 1999 Judicial Report shows that trial courts appointed pauper counsel in 87,870 cases. Of these cases, 1,993 cases, or 2.3%, were for cases other than criminal, juvenile, post conviction relief, or criminal appeals. These cases could include, but are not limited to, divorces, mental health competency hearings, probation revocations, and termination of parental rights. For CY 1999, the courts spent \$24 M for public defender staff, pauper attorney case by case, and other indigent expenses. If the courts spent 2.3% of its indigent defense budget for these other cases, then the estimated cost of legal representation for these types of cases would be \$650,000. The savings from this bill are indeterminable.

Explanation of Local Revenues:

State Agencies Affected: Division of State Court Administration

Local Agencies Affected: Trial courts.

Information Sources: Larry Landis, Indiana Public Defender Council; Hon. Roland Chamblee, St. Joseph Superior Court; Hon. Thomas Hunt, Grant Circuit Court; 1999 Indiana Judicial Report; Indiana State Department of Health website; Tom Carsillo, Division of State Court Administration.